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In the

Supreme Court of the United States

OCTOBER TERM 1942

No. 777

In the Matter of
U. R. BUTTS, Debtor,

REPUBLIC INSURANCE COMPANY, *Petitioner*

vs.

U. R. BUTTS, *Respondent*

PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

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PETITION FOR WRIT OF CERTIORARI TO THE CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT AND BRIEF IN SUPPORT THEREOF

To the Honorable, the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your Petitioner, Republic Insurance Company, a Texas corporation, prays this Court for the issuance of a Writ of

Certiorari to the United States Circuit Court of Appeals for the Fifth Circuit, to review a final judgment of that Court affirming a decree of the United States District Court for the Eastern District of Texas, and in support thereof respectfully shows:

A.

Summary Statement of the Matters Involved

Respondent purchased from Petitioner 1409 acres of land in Upshur County, Texas on June 30th, 1938 for FIFTEEN THOUSAND ($15,000.00) DOLLARS, THREE HUNDRED ($300.00) DOLLARS cash being paid and a vendor's lien for the remaining FOURTEEN THOUSAND, SEVEN HUNDRED ($14,700,00) DOLLARS being retained in the deed executed by Petitioner. (R. 16).

Under settled Texas law, the retention of a vendor's lien also retains the superior title to the land, and Respondent can only become vested with title upon payment in full of all of the debt, and neither discharge in bankruptcy, nor appraisals in bankruptcy, nor any other fact or circumstance (absent limitation) can affect Petitioner's right to recover the land in the absence of the payment in full of its entire debt.

Respondent repudiated his contract both by injunction against Republic Insurance Company's sale of the land (R. 17), and by filing of petition in bankruptcy (R. 18).

Petitioner, Republic Insurance Company, elected to pursue the remedy given it by Texas law by proceeding in trespass to try title (R. 17-18), a statutory action for trying titles to land. (Revised Civil Statutes of Texas of 1925, Title 124, Article 7364).

Petitioner's debt on March 1st, 1941, was FIFTEEN THOUSAND, NINE HUNDRED and TWENTY DOLLARS and FORTY-THREE CENTS ($15,920.43). The appraisal of Respondent's property was THREE HUNDRED and FORTY-FIVE DOLLARS and FIFTY CENTS ($345.50), and of the land here involved, made over Petitioner's objection, was FOURTEEN THOUSAND and NINETY DOLLARS ($14,090.00).

The conciliation commissioner held on the first meeting of the creditors, that there was no reasonable hope of rehabilitation. (R. 18).

The conciliation commissioner dismissed the petition for composition and extension insofar as Petitioner was concerned. (R. 18).

Respondent amended and was adjudged a bankrupt under Section 75 (s). (R. 18).

Petitioner moved (1) to strike the land involved from the assets, (2) to determine that Petitioner had superior title to the property and permitting it to proceed in the courts of Texas for title and possession, (3) to dismiss Petitioner from the bankruptcy proceeding with its property, and (4) that a trustee be appointed and authorized

and required to sell the land at public auction; each of the above being in the alternative. (R. 1-15 inclusive).

After a hearing before the conciliation commissioner, the supervising conciliation commissioner and the District Court, said motion was overruled, the District Court adopting the report and findings of the supervising conciliation commissioner. (R. 21-44 inclusive).

The Circuit Court of Appeals for the Fifth Circuit, on December 5th, 1942, affirmed the judgment of the District Court. (R. 51-55). Reported as Republic Insurance Company vs. Butts, 131 Fed. (2), 768.

The Circuit Court held: (1) that the Texas laws as to vendor's liens and superior title did not prevent the attachment of the jurisdiction of the bankruptcy court to the land involved; (2) that the vendor's superior title is "an invention of the Texas law to prevent a purchaser of land owing for it under a vendor's lien from keeping the land without paying for it"; (3) that the holder of a Texas vendor's lien and superior title is in the same position of one who had conveyed title by common law mortgage and that the vendee has such interest in the land as falls within the bankruptcy power under former debtor bankruptcy proceedings; and (4) that Petitioner though held to be a mortgagee, was not entitled to upon its motion duly filed to have the land sold by a trustee appointed by the Court. The opinion of the Circuit Court is set forth in the appendix, pages 47 to 51.